IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14..3..2007

Coram

The Honourable Mr.Justice DHARMA RAO ELIPE
and
The Honourable Mr.Justice K.CHANDRU

W.A.No.3078 of 2002

1. Nallappa Gounder (Died)
2. Lakshmi
3. N.Annapoorani
4. N.Jeevanandam ...Appellants/Petitioners

(Appellants 2 to 4 impleaded as LRs
of the deceased sole appellate
vide order dated 13.7.2006
made in WAMP.No.1583/06

-vs-

1. Government of Tamil Nadu
   Rep. by Secretary to Government
   Housing and Urban Development Department
   Fort St. George
   Chennai 600 009.

2. The Special Tahsildar (L.A.)
   Erode Urban Development Scheme
   Erode District .. Respondents/Respondents

Appeal file under Clause 15 of the Letters Patent against the order of this court dated 01.4.2002 made in W.P.No.14715 of 1998 to issue a writ of certiorari calling for the records of the first respondent culminating in his proceedings under 4(1) Notification passed in G.O.Ms.No.25, Housing and Urban Development Department dated 17.1.1997 and the section 6 Declaration passed in G.O.Ms. No. 34 housing and urban Development Department dated 4.3.1998 in so far as the petitioner's Land Situated in Survey No. 726/3 with an extent of 3.38 Hectares in Kanpalayam Village, Erode Division Erode District and quash the same.

For Petitioner : Mr.M.M.Sundaresh,

For Respondent : Mr.V.Arun, GA

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JUDGMENT

K.CHANDRU, J.

This writ appeal is directed against the order of the learned single Judge dated 01.4.2002 wherein and by which the writ petition being W.P.No.14715 of 1998 was dismissed without granting any relief.

2. The appellant had inherited the land in Survey No.726/3 to the extent of 0.38.0 Hectares situate in No.90, Arunvangadu Thottam, K.K.Nagar, Kasipalayam, Erode. In that land, the petitioner had his own house and also had coconut, palm trees, mango trees, Guava trees, and other trees and also had a tiled house with a borewell, bath room and toilet. He was also having a cow shed and was carrying on milk business in the said premises. The house was built on a loan obtained from the Cooperative Society. However, the first respondent vide G.O.Ms. No.25, Housing and Urban Development Department dated 17.01.1997, issued a Notification under Section 4(1) of the Land Acquisition Act, 1894 [for short, 'Act'] stating that the said land is required for the public purpose of building houses by the Tamil Nadu Housing Board.

3. As soon as the appellant came to know the same, he had written letters to the Tamil Nadu Housing Board and to the respondents stating that he does not have any other land and already, the house was built out of the loan taken from the Cooperative Society and that he was also carrying on a small business and considering the nature of the extent involved, viz., 0.38.0 Hectares, the land need not be acquired. It was also reiterated by subsequent letter sent to the appellant by the Executive Engineer of the Erode Housing Division and vide letter dated 03.7.1997, the appellant was asked to inform whether he was doing agriculture in the said land and to send necessary certificates for the same. Accordingly, the appellant obtained a certificate from the Revenue Divisional Officer stating that the land in question was owned by the appellant and he does not have any other land and he was given a certificate as a small farmer. Despite these objections, an Enquiry under Section 5(A) under the Act was conducted by the second respondent and in the report dated 11.02.1998 sent by him, the objections of the appellant were duly recorded.

4. With reference to the objection, the Executive Engineer of the Erode Housing Division stated that even though the appellant was staying in a house along with the bath room and toilet, and it was built on a loan obtained from the Society, after the completion of the project, he can apply to the Government to return the house and if the Government makes appropriate orders, further action can

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be taken and that, therefore, the land acquisition proceedings can be continued. This was a strange remark made by the Executive Engineer of the Erode Housing Division. However, the Government issued a Declaration under Section 6 of the Act by G.O.Ms.No.34 Housing and Urban Development Department dated 04.3.1998 and rejected the objections. It is at this stage, the appellant filed writ petition being W.P.No.14715 of 1998 seeking for quashing the Notification issued under Section 4(1) of the Act and Declaration made under Section 6 of the Act and wanted the land to be excluded.

5. No counter affidavit was filed by the respondents in the main writ petition. However, the learned single Judge, who heard the matter, dismissed the writ petition on the ground that the appellant is not a small farmer and he was owning more than 3.38 acres of land. However, this factual error has crept in and necessary records were not produced to show the actual extent of the ownership of the land in question. In the meantime, the appellant passed away and his legal representatives were brought on record in his place, who also continue to be in the same house.

6. We have heard Mr.M.M.Sundaresh, learned counsel appearing for the appellant and Mr.V.Arun, learned Government Advocate representing the respondents and have perused the records.

7. On behalf of the appellants, it was contended that the publication in the local area was not done properly and instead of making a publication in two leading newspapers, one in the local language and other in English, the same was made in newspapers, which are not having circulation in the local area. It was also stated that in respect of Survey No.726/4, though exclusion was made and the same was not considered by the respondents and there was a discrimination in terms of the same. It is seen that the publication was made in Pirpagal (afternoon) and Malaimurasu (evening). Both are Tamil newspapers and there is no assertion by any counter affidavit filed on behalf of the respondents that these two newspapers are having local circulation in the said area. Therefore, the judgment of the Division Bench reported in 2006 (4) MLJ 1405 [Chairman and Managing Director, Tamil Nadu Housing Board, Chennai v. Pushpaveni and others] will clearly apply to the facts of this case. The relevant passage found in paragraph 9 of the judgment is extracted below:

> "The Notification was published in two dailies, viz., Vettrimalai and Kumarimurasu which have no wide circulation in the area in question. It is not in dispute that both under Sections 4(1) and 6 of the Act, publication by three modes, viz., Gazette, two dailies and locality is mandatory. There is no specific assertion that the newspapers, Vettrimalai

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and Kumarimurasu had wide circulation in the area, where the lands are situate. In the absence of such particulars, it cannot be claimed that the publication was effected by means of three modes in accordance with the Act and the Rules."

8. To the same effect, another judgment of the Division Bench of this Court reported in 2005 (2) M.L.J. 106 [The Secretary to Government of Tamil Nadu, Housing and Urban Development v. J.Sivaprakasam and others] was also referred and paragraphs 11 and 12 of the said judgment are extracted below:

Para 11: "The purpose of requiring circulation in the locality is that people may get to know about the said notification under Section 4(1) so that they may be able to file their objections under Section 5-A or take other legal steps as they deem fit. In this connection we may also mention that the newspapers in which the notification under Section 4 (1) is published must be ' newspapers' having reasonably wide circulation in the locality. There are many newspapers which have little or no circulation and hence naturally publication in the said newspapers will not amount to a valid publication under Section 4(1), even if such newspapers have been registered under the Press Council Act or some other Act.

Para 12: It may be mentioned that there are many so called' newspapers' (some of which are even registered with the Press Council Act or some other enactment) which have little or no circulation and which are brought out from time to time merely to create a defence in case some auction or notification is challenged in Court. In our opinion, publication in such newspapers, which have little or no circulation in the locality concerned, will not be a valid publication. There may be fake newspapers which from time to time bring out only ten copies of any issue, if even no copy at all, the whole idea being to create a justification or defence if challenge is made in Court to the validity of some auction, notification, etc. In all such cases we will have to examine whether the notice or notification was published in newspapers having reasonably wide circulation in the locality. Unless that is established, we may be compelled to hold that it is a fake newspaper or there was no adequate publicity, in the locality and hence the very purpose of such notice or notification is lost."

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9. Even the objection raised on behalf of the appellant was rejected summarily and strange reasons are given by the requisitioning body. This is highly objectionable. Even before the land owners could raise any objection to the same, Declaration under Section 6 of the Act was made. In this context, is relevant to refer to a decision of the learned single Judge of this Court reported in 1997 (II) CTC 323 [R.Thiruvengadam v. The Secretary to Government, Housing Department, Government of Tamil Nadu, Madras and two others] and paragraphs 12 and 13 of the order reads as follows:

Para 12:"Admittedly, the petitioner, his brother and sister are residing with their families in 15 cents out of 1-83 acres of land. The petitioner and his family members are residing in the land continuously since their birth. An objection in this respect has been specifically raised. It is not only the petitioner but also his brother and sister are also residing there by putting up constructions. It is an admitted fact that there existed two houses in an extent of 15 cents, and what is disputed and stated is that they had put up basement in addition to two houses. Assuming that basements have been put up after 4(1) Notification, they admitted that the being that the petitioner, his brother and sister are living in their houses put up over the said 15 cents of land. Counter affidavit filed by the respondents also makes it clear. The requisitioning body has overruled the objection stating that the objections are common in nature and it is well open to them to apply for allotment of houses under ex-land owner category. This remark has been accepted by the 2nd respondent as well as the 1st respondent to deny residential houses where the petitioners are residing and allot it to third parties. They are willing to part with the remaining major extent of the land. Mishra, J. had an occasion to consider the identical contention.

Para 13: Mishra, J. has held that user of ones place for residence is also a public purpose and where they live, they should not be depraved of such residential houses or plots acquired. It is true that even residential houses can be acquired for public purpose. But the public purpose for which this land is acquired is also to provide houses or plots of lands to the members of the public who

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apply to the Housing Board. There is no justification to deprive the petitioner of the land over which they have put up a construction and living there from their childhood. The petitioner, his brother and sister are living there with their family members for decades. As the petitioner, his brother and sister are also residing there with their families by putting up houses, following the judgment of Mishra, J. this Court holds that the respondents have not applied their mind to the objections raised by the petitioner, his brother and sister. In this respect, Mishra, J., had considered the entire case law and has held thus:-

> "A question has thus arisen in the instant case, can any land allotted, assigned or marked for a public purpose and utilised for such a public purpose, be subjected to acquisition proceedings in the name of any of the public purposes that could can be spelled out from the definition or the Explanation of the 'public purpose'. A serious objection to the consideration of this aspect of the case, however, has been raised on behalf of the respondents. Learned counsel appearing for them has submitted that no specific plea in this behalf has been raised in the writ petition. Petitioner should not in such situation be permitted to raise any such ground. When pleadings are inadequate and material facts are absent, it is proper for any court not to permit a point, either of fact or law, to be raised in any proceedings. When, however, the material facts are available and on such facts that are not in dispute when law is applied, a consequence has to follow. It will be in my opinion, unjust to deny to a party availability of such a ground. Learned counsel for the respondents has also urged that the objections, which the petitioner was in a position to raise under Section 5A of the Act and failed to raise at that stage, she cannot raise (such objections to the acquisition) for the first time in a writ proceeding. As I have said earlier, if, on admitted facts when law is applied and the consequence has to follow, it will be unjust to deny to a party the benefit of such a legal consequence. It will indeed be extending the

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same unfair rule of procedure if on the ground that some objection could have been raised under Section 5A of the Act but was not raised, a plea of this kind is rejected. In the instant case, however, it is not possible to say that no such objection had been raised by the petitioner at the stage of enquiry under Section 5A of the Act. The petitioner, in one of the representations to the Tahsildar (Land Acquisition Officer concerned) has said:-

"Kindly read these objections besides the objections I had sent to you periodically... It should be noted that the house site is allotted by the Kodaikanal Cooperative Limited, to me as a part of the purpose for which the said house construction society was formed and hence the said P.W.D. Executive Engineer stated that the above construction is purely public interest and beyond the jurisdiction of the P.W.D.

It should be noted that the site for me under the scheme of public purpose could not be acquired for another public purpose as per the decision of the High Court and the Supreme Court."

10. In fact, throughout the proceedings, the deceased appellant had written to the authorities including the Tamil Nadu Housing Board reiterating his continuous residence in the house and also that he was making his livelihood out of selling of milk. It is also stated that the appellants have not received the compensation and throughout the proceedings, they had the benefit of interim order against dispossession and inspite of the fact that six years have elapsed, no counter affidavit has been filed about the development made in the neighbouring areas and the scheme implemented by the Tamil Nadu Housing Board. If the public purpose is for building houses on behalf of the Housing Board, it does not give right to dispossess persons, who are already having houses built on the loan taken from the cooperative society. Certainly, there can never be said to be any public purpose in making a person shelterless so as to provide shelter to some other unnamed beneficiaries.

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11. Under these circumstances, we have no hesitation to allow the appeal. Accordingly, the writ appeal shall stand allowed and the order passed in G.O.Ms.No.25, Housing and Urban Development Department dated 17.01.1997 made under Section 4(1) of the Act read with G.O.Ms.No.34 Housing and Urban Development Department dated 04.3.1998 made under Section 6 of the Act are set aside insofar as acquiring the land of appellants and the respondents are hereby prohibited from acquiring the land in Survey No.726/3 to the extent of 0.38.0 Hectares in Kasipalayam Village, Erode Division belonging to the appellants. However, the parties are allowed to bear their own costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. Secretary to Government
   Government of Tamil Nadu
   Housing and Urban Development Department
   Fort St. George
   Chennai 600 009.

2. The Special Tahsildar (L.A.)
   Erode Urban Development Scheme
   Erode District

+ 1 cc to Mr. M. M. Sundaresh, Advocate SR No. 16061/07

+ 1 cc to the Government Pleader, SR No.15921/07

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